IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

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ORDER

S.B. CIVIL WRIT PETITION NO.6468/2003-MOHANLAL & ANR VS. STATE OF RAJASTHAN & ANR.

WRIT PETITOIN UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER : 20th November, 2006

PRESENT
HON'BLE MR.MOHAMMAD RAFIQ,J.

REPORTABLE

Mr.K.K. Shah, Advocate for the petitioners.
Mr.R.S. Saluja Advocate, for the respondents.

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BY THE COURT: -

The petitioners in this writ petition have challenged the condition no.3 contained in the advertisement dated 9.1.1996 and have prayed for a writ of mandamus directing the respondents to provide them appointment in accordance with their merit position and declare restriction contained in the

aforesaid condition no.3 as illegal and ultra vires of Article 14 and 16 of the Constitution of India.

The respondents Municipal Corporation, Jodhpur issued an advertisement dated 9.1.1996 inviting thereby applications for appointment on the post of Safaiwala. Condition no.3 of the said advertisement however stated that appointment shall be given to only those in whose family no one was already in employment anywhere.

I have heard Shri K.K. Shah, learned counsel for the petitioner as well as Shri R.S. Saluja, learned counsel for the respondents.

Shri K.K. Shah, learned counsel for the petitioner argued that the condition like the present one is pre se discriminatory inasmuch as it seeks to deny to the petitioners even the right to consideration for appointment and therefore violative of Article 14 and 16 of the Constitution of India. Even if one or the other member of the family is already employed elsewhere or with the respondents that by itself cannot form basis for

denying right to consideration for appointment to otherwise an eligible candidate According to the petitioners, they have denied the appointment on the post of Safaiwala only because their wives are also engaged as Safaiwala. Such a condition is therefore liable to be declared illegal and unconstitutional. Learned counsel for the petitioner relied upon the judgment of the Hon'ble Supreme court in Baliram Prasad Vs. Union of India reported in AIR 1997 SC 637.

On the other hand, Shri R.S. Saluja, learned counsel for the respondents argued that the term family has come to be defined pursuant to the direction of this Court as per the guidelines provided by the Director Local Bodies. The term of family means one unit of husband, wife and their children. He has in this connection placed on record copy of the guidelines issued by the Directorate of Local Bodies in its letter dated 5th March, 2001. In view of this guideline, the appointment on the post of Safaiwala was denied to the petitioners because their wives were already serving as Safaiwala with the Municipal Corporation. Learned counsel for the respondents argued that

this is a just and reasonable condition and the object behind this is to ensure that the appointments to the post of Safaiwala are made equitably amongst all the family engaged in such work.

The issue raised in the present writ petition is squarely covered by the judgment of the Hon'ble Supreme Court in Baliram Prasad (supra) wherein the appointment was denied to the appellant only on the ground that his cousin was already employed. While the appellant in that case was admittedly much more meritorious than the person who was appointed, but the authorities took the view that since his cousin brother was already working as Extra Department Branch Post Master, the appellant could not be appointed on the said post. The Hon'ble Supreme Court in those facts held as under: -

> "There is no rhyme or reason underlying such an approach on the part of the authorities. To say the least it would be totally arbitrary and irrational. Even if there may be any risk of fraud etc. even non-relatives can be guilty of frauds while on the contrary relatives may not be prone to such frauds. But eve if they are, appropriate procedure can be adopted for detecting such frauds and bringing the

> guilty to book or even for effectively checking such tendencies by having appropriate vigilance machinery. But to refuse to appoint a more meritorious candidate only on the ground that his cousin brother was working in the same Post Office would, in our view, be totally an arbitrary exercise of power which cannot be countenanced on the touchstone of Article 14 of the Constitution of India."

On consideration of the matter in the light of the aforesaid authoritative pronouncement of the Hon'ble Supreme Court, I find that there is no intelligible differentia behind the impugned restriction inasmuch as this restriction does not have any reasonable nexus with the object sought to be achieved. Clearly, this condition places an arbitrary and unreasonable restriction seeking to defeat legitimate right of the eligible candidates.

Condition no.3 containing such restriction is thus held to be wholly arbitrary, unreasonable besides being discriminatory and violative of Article 14 and 16 of the Constitution of India and such a condition is therefore declared illegal and unconstitutional and accordingly struck down. In view of the

discussion made above, this writ petition deserves to be allowed and is accordingly allowed. Consequently the respondents are directed to consider the case of the petitioners for appointment on the post of Safaiwala and if found eligible and further if candidates lower in merit then any of them is found to have been appointed, also consider and appoint him/them and pass necessary order within a period of three months from the date copy of this judgment is produced before them.

There shall be no order as to costs.

(MOHAMMAD RAFIQ), J.

c.p.goyal/-